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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/362,693	07/29/1999	RANDELL L. MILLS	62-226-9A	7170

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MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

MAIL DATE	DELIVERY MODE
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07/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 09/362,693	Applicant(s) MILLS, RANDELL L.	
	Examiner Stephen J. Kalafut	Art Unit 1745	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 06 June 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See body of action.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

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Applicant's arguments filed 06 June 2007 have been fully considered but they are not persuasive.

Applicant argues that many of his references have passed peer review, and thus should be considered by the "Committee". The failure of some of these references to go through peer review is merely one reason why these references are not found persuasive. Every attachment of applicant's has also been found unpersuasive for other reasons, and none found unpersuasive for the lack of peer review alone.

Applicant argues that the "Committee" provides no support for the conclusion that some attachments contain data not accounted for by applicant's theory. This is not persuasive because paper no. 30, pages 2 and 3, explains the discrepancy between the differences in energy levels predicted by applicant's theory and those observed. While applicant may point to some data that does match his theory, this misses the point raised in paper no. 30. This paper does not say that no data fits in with applicant's theory, only that some does not, and points out, on page 3, where the discrepancy lies.

Applicant argues that the "Committee" provides no support for the conclusion that some of applicant's attachments speculate hydrino formation as an explanation for data not necessarily caused thereby. This is not persuasive because the reasons for this conclusion are set forth in the Appendices to paper no. 20041214, starting on page 5; and in paper no. 20050830, starting on page 10.

Applicant argues that the Heisenberg Uncertainty Principle as applied by Krieg has no basis in fact, as shown by Lieb, but also faults the approach by Lieb as "physically baseless". See also the Appendix to paper no. 20061129, starting on page 18.

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Applicant argues that he need not “understand the precise theoretical basis for why his invention works” (emphasis applicant’s), and that he has disclosed his invention sufficiently to enable one of ordinary skill in the art to practice it. Applicant also alleged that the “Committee” has twisted his word into a “straw man” argument that “an inventor is free to put forth any theory he wishes”. The “Committee” does not say that applicant believes that an inventor may “put forth any theory he wishes”. The Examiner merely states that the lack of a requirement to precisely understand the theory behind one’s invention does not permit one to allege a theory that is not in accordance with accepted scientific principles.

Applicant argues that the Balmer line broadening shown by Cvetanovic is independent of the orientation of the observer. Thus, the Abstract of Cvetanovic is incorrect. However, a viewing of Figure 4c shows a different overall curve shape. At the wavelength of 656.0 nm, for example, the level of I (a.u.) appears to be close to half way between zero and 500 a.u., thus falling between 200 and 250 a.u., while in figures 4a and 4b, the level of I at 656.0 nm appears to be much closer to zero. The curves in figures 4a and 4b appear to be more smoothly concave going up to the peak from the surrounding zero background, while in figure 4c, there appears to be a plateau between the peak and the surrounding zero background.

Applicant faults EarthTech, whose “Mills experiment showed no detectable sign of excess heat” for being a “competitor”, but also points to other labs which have “validated Applicant’s experiments”. This shows a contradictory standard by applicant. Results agreeing with his are valid and independent, but results that differ arise from competition, and cannot be considered unbiased.

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Applicant points out that there is no requirement that each catalyst provide all possible lower-energy states, and that in some papers, the lower-energy states correspond to the predicted values of "q", which are multiples of 13.6 eV. This is not persuasive because, as stated in paper no. 30, applicant has observed values for "q" that are outside what his formula predicts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

sjk



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